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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

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Radioactive Materials Registrant:

As a registrant of the State of Michigan for the use of Naturally-Occurring and Accelerator Produced Radioactive Material (NARM), you will be affected by regulatory changes that will soon take place. The most specific result of these changes is that your facility will soon become a fee-paying licensee with the U.S. Nuclear Regulatory Commission (NRC). The purpose of this letter is to describe regulatory changes taking place as a result of federal legislation passed in 2005, and possible changes in the structure and scope of Michigan's radiological protection program.

THE ENERGY POLICY ACT OF 2005

For many years, the regulation of radioactive material has been split between state and federal authorities. The NRC is responsible for byproduct, source, and special nuclear material as defined in the federal Atomic Energy Act (AEA). The states have been responsible for radioactive materials not regulated under the AEA, mainly NARM. Typical NARM materials are radium, thallium, gallium, and fluorine.

The Energy Policy Act of 2005 (EPAct), however, redefines "byproduct material" to include most NARM, except for very diffuse materials. The effect of this change is that you, the user of such material, will fall under the regulatory authority of the NRC and will need to obtain an NRC license, and begin to pay license fees, by no later than August 2009.

BECOMING AN "AGREEMENT STATE"

Under provisions of the federal Atomic Energy Act, a state can enter into an Agreement with the NRC and assume regulatory authority over certain categories of radioactive materials. There are currently 34 Agreement States, with three other states formally pursuing an Agreement.

Last year, because of the fiscal and policy implications of the EPAct, NRC Chairman Dale Klein wrote to the Governors of all non-Agreement States, asking whether those states would consider negotiating an Agreement with the NRC. In her response, Governor Jennifer Granholm directed the Michigan Departments of Environmental Quality (DEQ) and Community Health (DCH) to propose a strategy to pursue an Agreement and to recombine the radiation protection programs in both Departments within DCH. The Governor also directed the Departments to consult with NRC licensees and other stakeholders on that proposed strategy. A DEQ/DCH work group has been working since last fall to develop such a strategy.

Because of the changes brought on by the EPAct, the Agreement would also cover facilities such as yours that currently use only state-regulated radioactive materials.

## BENEFITS OF BECOMING AN AGREEMENT

We believe that an Agreement State program offers significant benefits to current NRC licensees, to current NARM registrants, and to the State of Michigan:

- The safety of Michigan's citizens will be significantly enhanced through the development of a more comprehensive radiation protection program, in which the State will be much more capable of rapidly addressing a broad range of radiological issues, incidents, and threats.
- Consolidation of regulatory authority at the state level will offer Michigan's radioactive materials licensees a more responsive and accessible regulatory staff.
- Annual fees paid by most licensees should be significantly reduced.
- Fees paid by licensees will remain in the state, rather than going into federal coffers.

## THE STRATEGY

Before the NRC will sign an Agreement with a state, the state must have a comprehensive radiological protection program in place. The state program must be able to assume full regulatory responsibility from the NRC without diminution of oversight capabilities and service to the licensees. State Radioactive Materials Program staff would be responsible for all phases of the regulatory program: licensing, inspections, enforcement, decommissioning, and incident response.

The proposed strategy follows the successful experience of other states that have recently become Agreement States; most notably, this strategy is modeled after the efforts of the State of Wisconsin, which became an Agreement State in 2003. An attachment provides information on the timeline, staffing and training, and funding provisions of this strategy. We expect that the entire process of becoming an Agreement State will take four years.

## PROGRAM DEVELOPMENT FUNDING

The NRC provides no funding for the state to develop its comprehensive program. In order to hire and train the additional staff for an Agreement State program, we propose the establishment of a four-year interim fee on licensees and NARM registrants. Once Michigan becomes an Agreement State, annual license fees paid to the state program will be substantially less than what you would pay to the NRC for annual fees. Our own estimates, and the experience of other states that have taken this approach, indicate that most licensees will recoup their interim fees in four years, with substantial savings being enjoyed beyond that point.

## STAKEHOLDER CONSULTATIONS

We shared the basics of the strategy at a special meeting of the Great Lakes Chapter of the Health Physics Society in January. On March 2, 2007, we held a meeting in Lansing with a broad range of licensees and associations to describe the strategy in more detail. A representative from the NRC also spoke to the attendees about how NRC works with states seeking Agreements and its ongoing involvement with Agreement States.

At the March 2 meeting, we asked for volunteers to serve on an advisory committee to assist us in further evaluating the strategy and work on key aspects of the initiative such as statutory and rules revisions. This Agreement State Advisory Committee (ASAC) has met twice since March 2, and has provided valuable insights and recommendations to state staff.

May 4, 2007

## WHAT IS COMING

No decision has yet been made on whether to pursue an Agreement. We believe that the members of the ASAC are supportive of moving ahead toward an Agreement, contingent on some key issues being resolved. We will work very closely with that group to work through those issues.

Two key milestones that we hope to achieve in 2007 include the signing of a "Letter of Intent" by Governor Granholm, which would formally request the assistance of the NRC, and the passage of statutory amendments to Part 135 – Radiation Control - of the Public Health Code.

Because the State of Michigan will not complete the Agreement State process prior to the August, 2009 deadline embodied in the EPAct, current NARM users will likely have to file a license application with the NRC prior to August, 2009. You will receive information directly from the NRC on the process for obtaining that license. At the time that Michigan signs an Agreement, all NRC licensees would automatically become licensees of the State of Michigan.

## KEEPING INFORMED

We want to keep everyone interested in this process as informed as possible as we move forward. We need your involvement as we continue to develop a strategy for pursuing an NRC Agreement. If the decision is eventually made by the Governor to formally pursue the Agreement, we will need your involvement and support to implement a challenging program.

To that end, we have established a web site for conveying information on our efforts. The web site includes meeting summaries, a powerpoint slide show used at the March 2 meeting, a document entitled "Key Questions and Issues," and past activities and documents. Go to [www.michigan.gov/rss](http://www.michigan.gov/rss) and click on the link titled "Consideration of Michigan Pursuing an NRC Agreement."

Also, we have developed an e-mail list of all those interested in receiving regular updates on this initiative. If you are interested in being added to that list, please email ([strongt@michigan.gov](mailto:strongt@michigan.gov)) or call me (517-241-1252).

Finally, we are eager to address any questions or concerns you may have. Please feel free to contact me if you have questions, comments or recommendations.

Sincerely,



Thor Strong, Chief  
Radiological Protection Section  
Waste and Hazardous Materials Division  
Michigan Department of Environmental Quality

Attachment

## **The Strategy for Implementing an NRC Agreement**

Before the NRC will sign an Agreement with a state, the state must have a comprehensive radiological protection program in place. The state program must be able to assume full regulatory responsibility from the NRC without diminution of oversight capabilities and service to the licensees. State Radioactive Materials Program staff would be responsible for all phases of the regulatory program: licensing, inspections, enforcement, decommissioning, and incident response.

The proposed strategy follows the successful experience of other states that have recently become Agreement States; most notably, this strategy is modeled after the efforts of the State of Wisconsin, which became an Agreement State in 2003.

### **Timeline –**

An aggressive timeline would be followed, with the goal of signing an Agreement by September, 2011. Key initial milestones for 2007 include a "Letter of Intent" (a formal commitment to seek an Agreement) from the Governor, followed by introduction of needed legislation.

### **Staffing –**

Currently, the DEQ's Radioactive Materials Program consists of 3.5 FTEs. Based on recommendations of the Council of Radiation Control Program Directors and the experience of other state programs, an additional ten FTEs (eight technical, two clerical) should be established and filled over the next four years.

### **Program Start-up Financing –**

The NRC provides no funding for a state to develop the comprehensive program needed to become an Agreement State. Following the lead of other states that have recently become Agreement States, the strategy includes a four-year interim fee on NRC licensees and NARM users to provide the necessary program development funds. The annual interim fee would be approximately 40% of the annual license fee paid to NRC in 2007 (or first year of program). For radioactive materials users that are not NRC licensees (ie. NARM-only), the fee would be based on a comparable NRC user category. The fee would remain the same for all four years; it would not increase even if NRC fees do increase.

### **Program Financing –**

Agreement State programs are often less costly than that of NRC, resulting in reduced annual fees on licensees. Based on proposed staffing levels, we estimate that Michigan's fees on licensees will be about 35% below comparable NRC fees when Michigan becomes an Agreement State. Given the reduced fees under an Agreement, most licensees would recoup the cost of interim fees in less than four years.

### **Training –**

We intend to hire health physicists for the technical positions. Training of new and existing staff must be done quickly, but fully. Mechanisms for providing training will include shadowing NRC staff, attending the same NRC training courses attended by NRC inspectors, visiting other Agreement States, and working with licensees to take advantage of in-state training opportunities.